

EXHIBIT E



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December 5, 2018

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Via Electronic Mail: henry.appel@ohioattorneygeneral.gov

Henry G. Appel
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30 E. Broad Street, 26th Floor
Columbus, OH 43215

**Re: *In re: National Prescription Opiate Litigation*, Case No. 1:17-md-02804
Ohio Department of Health Production Deficiencies**

Dear Mr. Appel:

We write to address significant deficiencies in the Ohio Department of Health's ("ODH") production of documents in response to the subpoenas served on ODH on August 7, 2018. ODH has thus far made three relatively small productions of documents, while promising to make rolling productions to comply with the subpoena.¹ Despite these assurances, however, there are still more than 20 categories of documents for which little or no documents have been produced. These deficiencies are concerning given that ODH has now had nearly four months to complete its production in response to the subpoena.

Specifically, our review of ODH's productions indicates that it has failed to produce relevant documents from the following categories, which are numbered in accordance with Defendants' original subpoena:

2. All Documents relating to analyses by You of Chronic Pain and its impact on public health.
3. All Documents relating to analysis by You of Breakthrough Pain and its impact on public health.
4. All Documents relating to analyses by You concerning the use of Prescription Opioids to treat Chronic Pain and Breakthrough Pain, including the creation of prescribing guidelines and any revisions thereto.
6. All Documents relating to Your involvement in drafting, assessing, introducing, lobbying for, implementing, administering, and/or monitoring compliance with HB 187 of the 122nd General Assembly, Ohio's Intractable Pain Act, and any amendments thereto.
7. All Documents relating to the Ohio Compassionate Care Task Force, including (a) its formation, (b) its members, (c) its meetings, (d) any reports or recommendations it created, (e) any

¹ ODH, with arguably the longest and largest role in addressing the Ohio opioid addiction crisis, has produced 1148 documents/files comprising approximately 10,000 pages. By way of comparison, the Ohio Board of Nursing – an entity with far less involvement in addressing the crisis – has produced documents comprising more than 179,000 pages. This alone strongly suggests a lack of diligence on ODH's part in responding to the subpoena.

materials reviewed by its members to prepare its reports or recommendations, including any data or research provided for its deliberations, (f) communications to or from its members, and (g) its budget or expenses.

- *To date, only one report related to this committee has been produced. See ODH_MDL 3rd Production_006672.*

8. All Documents relating to the creation of, or revisions to, policies governing the availability of Prescription Opioids to Your employees, workers compensation participants, and/or other public assistance program participants, including formulary decisions related to same.

- *To date, only one document possibly related to request no. 8 has been produced. See ODH_MDL 3rd Production_008077.*

10. All Documents relating to the Ohio Prescription Drug Abuse Task Force, including (a) its formation, (b) its members, including the process, criteria, and guidelines by which its members were selected for inclusion, (c) its meetings, (d) any reports or recommendations it created, (e) any materials reviewed by its members to prepare its reports or recommendations, including any data or research provided for its deliberations, (f) communications to or from its members, and (g) its budget or expenses.

12. All Documents relating to any investigation conducted by You or on Your behalf concerning marketing, advertising, distribution, or promotional activities of Defendants as a potential cause of the opioid abuse epidemic in the State of Ohio.

14. All Documents relating to Your response to the opioid abuse epidemic, including the creation of task forces or advisory committees, legislative or regulatory action, interagency collaboration, public or private partnerships, and engagement of outside experts.

19. All Communications with Defendants related to Prescription Opioids, including (a) marketing and distribution, (b) risks and benefits, (c) safety outcomes, and (d) abuse, misuse, addiction, or diversion.

20. All Communications with any other person or entity that relate to Defendants and Prescription Opioids, including (a) marketing and distribution, (b) risks and benefits, (c) safety outcomes, and (d) abuse, misuse, addiction, or diversion.

22. All Documents containing data or analysis relating to the addictive potential of Prescription Opioids resulting from use in accordance with their FDA-approved warning labels.

28. All Documents containing data and/or analysis relating to the number of Licensed Medical Professionals indicted, prosecuted, or disciplined in the State of Ohio from 1990 to the present for illegal or improper prescribing of Prescription Opioids.

29. All Documents containing data or analysis relating to the number of illegal or improper prescriptions of Prescription Opioids in the State of Ohio from 1990 to the present.

30. All Documents containing data or analysis relating to the number of patients who obtained opioid prescriptions in the State of Ohio from 1990 to the present through illegal or improper means.

31. All Documents containing data or analysis relating to the number of Prescription Opioids in the State of Ohio from 1990 to the present that were prescribed off-label or contrary to accepted medical guidelines.

- *To date, only one document related to this request has been produced. See ODH_MDL 3rd Production_007841.*

32. All Documents containing data or analysis relating to the illegal manufacture or importation into the State of Ohio from 1990 to the present of Illicit Opioids.

- *Very few documents that directly relate to this request have been produced. See ODH_MDL 3rd Production_007548, 007567, 008144.*

Further, for the reasons noted, the following categories remain substantially deficient:

1. Organizational charts for the ODH from 1990 to the present.
 - *Organization charts from Jan. 2006-Jan. 2018 were produced as part of ODH's supplemental production dated November 8, 2018. Organizational charts from 1990 to 2006, and potentially post-January 2018, remain outstanding.*
9. All Documents relating to Your identification of the opioid abuse epidemic in the State of Ohio.
 - *ODH has thus far only indirectly addressed this category through production of documents related to document request no. 17 (presentations, lectures, etc.).*
11. All Documents relating to any investigation conducted by You or on Your behalf concerning opioid abuse in the State of Ohio.
 - *ODH has thus far only indirectly addressed this category through production of documents related to document request no. 17 (presentations, lectures, etc.).*
13. All Documents relating to Your identification or investigation of the factors (other than the alleged activities of Defendants) that caused or contributed to the opioid abuse epidemic in the State of Ohio.
 - *ODH has thus far only indirectly addressed this category through production of two documents (see ODH_MDL 1st Production_002208 and ODH_MDL 1st Production_003897).*
17. All Documents relating to presentations, lectures, seminars, workshops, symposia, or other similar educational programs made or sponsored by You or on Your behalf related to the opioid abuse epidemic, including all data and source materials used to create the content for any such programs or events.
 - *Documents responsive to this request remain outstanding. For example, attendance lists, videos, and communications relating to lectures, seminars, symposia, etc., have not been produced.*
23. All Documents containing data or analysis relating to the number of opioid addicts in the State of Ohio from 1990 to the present, and specifically to those who became addicted as a result of Legitimate Opioid Use.
 - *With the exception of one document potentially responsive to this request (see ODH_MDL 1st Production_001318), no responsive documents have been produced.*
24. All Documents containing data or analysis relating to the number of opioid overdoses (both fatal and non-fatal) in the State of Ohio from 1990 to the present, and specifically to those who overdosed on Prescription Opioids.
 - *For example, ODH has not produced documents relating to or analyzing overdose data obtained through EpiCenter Data Briefs.*

In addition to the specific deficiencies identified above, we note additional global deficiencies with ODH's productions. In particular, none of ODH's productions contain metadata. ODH should produce its electronic files in the manner and format required by Fed. R. Civ. P. 45 and Case Management Order No. 3 (attached to the subpoena). Also, as you are aware, ODH has not produced any email communications responsive to the document requests. While we received Ms. Tertel's November 21st request to provide search terms for the retrieval of responsive emails, we are disappointed that your office waited more than three months to inform us of this issue. We are currently working to create a list of search terms and will provide the list as soon as possible.

Finally, we received your letter dated November 8, 2018 regarding a potential designation of Ms. Defiore-Hyrmer as ODH's Fed. R. Civ. P. 30(b)(6) witness. ODH did not identify, however, the specific topics for which Ms. Defiore-Hyrmer would testify. Please identify the specific topics for Ms. Deiore-Hyrmer's deposition. Further, if she is not designated to testify regarding all of the topics, please identify all remaining 30(b)(6) witness(es) and their respective deposition topics.

Please confirm that all outstanding documents and 30(b)(6) designations will be produced by December 12, 2018. Otherwise, Defendants will have no choice but to seek the assistance of Special Master Cohen to compel production of these outstanding documents and information.

Under the circumstances, we request an opportunity to meet and confer concerning these issues as soon as possible. Please let us know your availability for a conference call this week. In the meantime, we appreciate your prompt attention to complete ODH's production requirements.

Very truly yours,

TUCKER ELLIS LLP



Justin E. Rice
Attorney

JER:mgw

cc: Yvonne Tertel (via email)
James Wakely (via email)
Tariq M. Naeem, Esq.